



DEPARTMENT OF COMMERCE

International Trade Administration

A-552-802

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On May 30, 2012, the United States Court of International Trade (“CIT”) sustained the Department of Commerce’s (“the Department”) results of redetermination pursuant to the CIT’s remand order in Amanda Foods (Vietnam) Ltd., et al. v. United States, 807 F. Supp. 2d 1332 (CIT 2011) (“Amanda 2011”).¹ Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) (“Timken”), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (“Diamond Sawblades”), the Department is notifying the public that the final judgment in this case is not in harmony with the Department’s final results and is amending the final results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam covering the period of review (“POR”) of February 1, 2007 through January 31, 2008, with respect to the margins assigned to the following litigants: Amanda Foods (Vietnam) Ltd.; Bac Lieu Fisheries Joint Stock Company; Cadovimex Seafood Import-Export and Processing Joint Stock Company; Cafatex Fishery Joint Stock Corporation; Cam Ranh Seafoods Processing Enterprise Company; Cuulong Seaproducts Company; Danang Seaproducts Import Export Corporation; Minh Hai Export

¹ See Final Results Of Redetermination Pursuant To Court Remand, Court No. 09-00431, dated March 29, 2012, available at: <http://ia.ita.doc.gov/remands/index.html> (“Amanda 2011 Final Remand”); see also Amanda Foods (Vietnam) Ltd., et al., v. United States, Slip Op. 12-68 (CIT May 30, 2012) (judgment).

Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”); Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”); Minh Hai Sea Products Import Export Company (“Seaprimex Co”); Ngoc Sinh Private Enterprise; Nha Trang Seaproduct Company; Phu Cuong Seafood Processing and Import-Export Co., Ltd.; Sao Ta Foods Joint Stock Company; Soc Trang Aquatic Products and General Import Export Company; and UTXI Aquatic Products Processing Company.^{2,3}

DATES: Effective June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-6905.

SUPPLEMENTARY INFORMATION:

Background

In the third administrative review of the antidumping duty order on frozen warmwater shrimp from the Socialist Republic of Vietnam, the Department reviewed 110 companies.⁴ Of those 110 companies, four companies certified they had no shipments, three companies were selected for individual examination, 25 cooperative, non-individually examined respondents demonstrated eligibility for, and received, a separate rate, and 78 companies were considered part of the Vietnam-Wide entity because they did not demonstrate eligibility for a separate rate.

The Department explained in the Vietnam Shrimp AR3 Final that the statute and the Department’s regulations do not directly address the establishment of a rate to be applied to

² See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) (“Vietnam Shrimp AR3 Final”).

³ On March 8, 2012, the Court signed a stipulation of dismissal with respect to Coastal Fishery Development a.k.a. Coastal Fisheries Development Corporation; Thuan Phuoc Seafoods and Trading Corporation a.k.a. frozen seafoods factory 32 a.k.a. seafoods and foodstuff factory a.k.a. Frozen Seafoods Factory No. 32 a.k.a. Frozen Seafoods Fty; Investment Commerce Fisheries Corporation; Nha Trang Fisheries Joint Stock Company; Viet Foods Co., Ltd.; and Vinh Loi Import Export Co. Ltd. As a result, these companies are no longer parties in this litigation, are not subject to this remand, and we have not changed the rate originally assigned to them in Vietnam Shrimp AR3 Final.

⁴ See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results; Preliminary Partial Rescission and Request for Revocation, In Part, of the Third Administrative Review, 74 FR 10009 (March 9, 2009), unchanged in VN Shrimp AR3 Final, 74 FR at 47196-7.

companies not selected for individual examination where the Department has limited its examination in an administrative review pursuant to section 777(A)(c)(2) of the Tariff Act of 1930, as amended (“Act”).⁵ The Department further explained that its practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies excluding zero and de minimis rates and rates based entirely on facts available.⁶ However, in this case, with respect to the cooperative non-individually examined respondents, the Department determined that the circumstances regarding the separate rate calculation methodology were comparable to those of the preceding administrative review, in which the Department also calculated de minimis margins for each mandatory respondent. As a result, consistent with the methodology applied in the preceding administrative review, the Department assigned a separate rate of 4.57 percent, which is the margin calculated for cooperative separate rate respondents in the underlying investigation, to those non-individually examined respondents in this administrative review that did not have their own prior or concurrently calculated margin.⁷ Additionally, for those non-individually examined respondents for whom we calculated a rate in a more recent or contemporaneous segment, we assigned that calculated rate as the company’s separate rate in this review.⁸ Specifically, for Viet Hai Seafoods Company Ltd. and Grobest & I-Mei Industrial (Vietnam) Co., Ltd., we assigned the rates most recently calculated for both companies (zero) as their separate rate in the third administrative review because these rates were more recent than the separate rate calculated in the underlying investigation and were based on the companies’ own data. Additionally, for Minh Hai Joint-Stock Seafoods Processing Company, we assigned

⁵ See VN Shrimp AR3 Final, 74 FR at 47195

⁶ See id.

⁷ See id.

⁸ See id.

as a separate rate the most recent rate of 4.30 percent, which we calculated for it in the underlying investigation based on the company's own data.⁹

This same separate rate assignment methodology was applied in the final results of the second administrative review of frozen warmwater shrimp from the Socialist Republic of Vietnam. In the litigation involving that proceeding, in Amanda Foods (Vietnam) Ltd., et al. v. United States, 647 F. Supp. 2d 1368 (CIT 2009) ("Amanda I"), the CIT remanded the separate rate assignment methodology to either assign to the plaintiffs the weighted-average rate of the mandatory respondents, or else provide justification, based on substantial evidence on the record, for using another rate. Consequently, in the Department's remand redetermination for Amanda I, we stated that "the Department employed the correct analytical framework in its draft remand redetermination, in determining a reasonable method with which to assign a rate to non-individually examined respondents" in the second administrative review.¹⁰

However, in Amanda Foods (Vietnam) Ltd., et al. v. United States, 714 F. Supp. 2d 1282 (CIT 2010) ("Amanda II"), the CIT disagreed with the Department's justification for applying the selected separate rate assignment methodology in the Amanda I remand redetermination and remanded the issue back to the Department, ordering that the Department employ a reasonable method {to assign a separate rate}, which may "'include{e} averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated,' 19 U.S.C. § 1673d(c)(5)(B) and...assign to Plaintiffs dumping margins for the second {period of review ("POR")}" which are reasonable considering the evidence on the record as a whole; to do so, Commerce may reopen the evidentiary record if need be."¹¹

In the Department's remand redetermination for Amanda II, the Department reopened the record to gather the quantity and value ("Q&V") of the plaintiffs' sales to the United States

⁹ See id.

¹⁰ See Final Results of Redetermination Pursuant To Court Remand, dated March 3, 2010, at 21.

¹¹ See Amanda II, 714 F. Supp. 2d at 1296.

during the POR on a count-size specific basis to conduct an abbreviated comparative exercise using this Q&V data and the mandatory respondents' weighted-average normal values to determine whether the record contained evidence of dumping. Based on our analysis, we determined that there was no evidence of dumping on the record, and assigned, under protest, a separate rate to the 23 plaintiffs equal to the simple average of the dumping margins calculated for the two individually-examined companies.¹² The CIT affirmed the Amanda II Remand Redetermination in Amanda Foods (Vietnam) Ltd., et al. v. United States, 774 F. Supp. 2d 1286 (CIT 2011) (“Amanda III”).

As noted above, in light of Amanda III, the Department requested a voluntary remand with respect to the separate rate calculation methodology applied in Vietnam Shrimp AR3 Final.¹³ Consequently, based on the exercise similarly conducted in Amanda II Remand Redetermination and affirmed in Amanda III, in the Amanda 2011 Final Remand, we analyzed the data collected from the 16 remaining plaintiffs and determined that the record does not contain substantial evidence to support the continued assignment of the separate rate applied in Vietnam Shrimp AR3 Final to these 16 plaintiffs.

Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s May 30, 2012, judgment sustaining the Amanda 2011 Final Remand constitutes a final decision of that court that is not in harmony with the Vietnam Shrimp AR3 Final. This notice is published in fulfillment of the publication requirements of Timken. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the

¹² See Amanda II Remand Redetermination at 6.

¹³ See Amanda 2011, 807 F. Supp. 2d at 1338.

period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for the subsequent and most recent period during which the respondents were reviewed.

Amended Final Results

Because there is now a final court decision with respect to the 16 Plaintiffs, revised dumping margins are as follows¹⁴:

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Amanda Foods (Vietnam) Ltd.	0.26 % (<u>de minimis</u>)
Bac Lieu Fisheries Joint Stock Company	0.26 % (<u>de minimis</u>)
Cadovimex-Vietnam, aka Cadovimex Seafood Import-Export and Processing Joint Stock Company ("Cadovimex-Vietnam"),	0.26 % (<u>de minimis</u>)
Cafatex Fishery Joint Stock Corporation ("Cafatex Corp.") aka Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex), aka Cafatex, aka Cafatex Vietnam, aka Xi Nghiep Che Bien Thuy Suc San Xuat Khau Can Tho, aka Cas, aka Cas Branch, aka Cafatex Saigon, aka Cafatex Fishery Joint Stock Corporation, aka Cafatex Corporation, aka Taydo Seafood Enterprise	0.26 % (<u>de minimis</u>)
Cam Ranh Seafoods Processing Enterprise Company ("Camranh Seafoods") aka Camranh Seafoods	0.26 % (<u>de minimis</u>)
Cuulong Seaproducts Company ("Cuu Long Seapro") aka Cuu Long Seaproducts Limited (Cuulong Seapro) aka Cuulong Seapro, aka Cuulong Seaproducts Company ("Cuulong Seapro") ("Cuu Long Seapro")	0.26 % (<u>de minimis</u>)
Danang Seaproducts Import Export Corporation ("Seaprodex Danang") aka Tho Quang Seafood Processing & Export Company, aka Seaprodex Danang, aka Tho Quang Seafood Processing And Export Company, aka Tho Quang, aka Tho Quang Co.	0.26 % (<u>de minimis</u>)

¹⁴ All other rates determined in Vietnam Shrimp AR3 Final remain unchanged.

Minh Hai Export Frozen Seafood Processing Joint Stock Company, aka Minh Hai Jostoco, aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company (“Minh Hai Jostoco”), aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company, aka Minh Hai Joint Stock Seafood Processing Joint-Stock Company, aka Minh Hai Export Frozen Seafood Processing Joint-Stock Co., aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company Minh Hai Jostoco	0.26 % (<u>de minimis</u>)
Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”) aka Sea Minh Hai, aka Minh Hai Joint-Stock Seafoods Processing Company	0.26 % (<u>de minimis</u>)
Minh Hai Sea Products Import Export Company (Seaprimex Co) , aka Ca Mau Seafood Joint Stock Company (“SEAPRIMEXCO”) aka Seaprimexco Vietnam, aka Seaprimexco, aka Ca Mau Seafood Joint Stock Company (Seaprimexco)	0.26 % (<u>de minimis</u>)
Ngoc Sinh Private Enterprise, aka Ngoc Sinh Seafoods, aka Ngoc Sinh Seafoods Processing and Trading Enterprise	0.26 % (<u>de minimis</u>)
Nha Trang Seaproduct Company (“Nha Trang Seafoods”)	0.26 % (<u>de minimis</u>)
Phu Cuong Seafood Processing and Import-Export Co., Ltd.	0.26 % (<u>de minimis</u>)
Sao Ta Foods Joint Stock Company (“Fimex VN”), aka Sao Ta Seafood Factory	0.26 % (<u>de minimis</u>)
Soc Trang Seafood Joint Stock Company	0.26 % (<u>de minimis</u>)
UTXI Aquatic Products Processing Corporation	0.26 % (<u>de minimis</u>)

In the event the CIT’s ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from the 16 Plaintiffs based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

June 7, 2012 _____
Date

